IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16492 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHETH ENTERPRISE PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 16492 of 2003

MR MIHIR JOSHI WITH MR DHAVAL SHAH for Petitioner No. 1-2
MR DN PATEL for Respondent Nos. 1 to 4
MR SATHUSH LAL for MR CZ SANKHLA for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 20/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Central Government Standing Counsel appears and waives service of rule on behalf of the respondent Nos.1 to 4 and Mr. Sathush Lal, learned advocate appears and waives service of rule on behalf of respondent No.5.

2. In this petition under Article 226 of the Constitution, the petitioners have prayed for a direction to the respondent Customs authorities to return the Bank guarantees, security deposits and to release the bonds in compliance of the orders dated 30.1.2003 at Annexures C and G to the petition.

3. At the petitioners' request the bills of entries of the petitioners were provisionally assessed on furnishing the Bank guarantees No.726 of 1996 and 727 of 1996 both dated 12.7.1996 and also the bank guarantee referred to in the order dated 30.1.2003 at Annexure G to the petition. In both the matters, the Assistant Commissioner of Customs, Customs House, Kandla passed order dated 30.1.2003 and 31.1.2003 in the following terms:

"In view of the above I order to accept the value declared in the Bills of Entry by the Importer under Rule 5 of the Customs Act, 1988 in all the seven cases and the assessment be finalised accordingly. The Bank Guarantees as aforesaid which were executed for the purpose of the release of the goods be returned to the Importer as a consequential relief."

"In view of the above I order to accept the value declared in the Bills of Entry by the Importer under Rule 5 of the Customs Act, 1988 in all the three cases and the assessment be finalised accordingly. The Bank Guarantees and the R/D as aforesaid be returned to the Importer as a consequential relief."

The grievance in the present petition is that inspite of the aforesaid directions, the office of the respondent authorities has not released the bank guarantees, security deposits and the bonds.

4. Having heard Mr. Mihir Joshi, learned counsel for the petitioners, Mr. D.N. Patel, learned Senior Central Government Standing Counsel for respondent Nos.1 to 4 and Mr. Sathush Lal, learned advocate for the

respondent No.5 bank, it appears that there is no justification given for not returning the bank guarantees, etc., except the previsions of section 129D (3). It is submitted that since under the provisions of sub-section (1) or sub-section (2) Board or Commissioner of Customs may exercise powers of suo motu revision and the time limit specified in the same in sub-section (3) is one year as the outer limit, the department is justified in withholding the bank guarantees till 31.1.2004.

Mr. Joshi, learned counsel for the petitioners, seriously contests the aforesaid submission.

However, in the facts and circumstances of the present case, it is not necessary to go into the merits of the said controversy because in any view of the matter, one year period is going to be over on 31.1.2004.

5. Hence, the petition is disposed of with a direction to the respondents to return to the petitioners the bank guarantees, security deposits and to release the bonds which are subject matter of this petition, may be after 31.1.2004, but in any case by 7.2.2004.

Rule is made absolute accordingly with no order as to costs. Direct service is permitted and shall be effected by 30.1.2004.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)